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SEP 12 2006

### REMARKS

The sole remaining claim, independent claim 1, has been amended in response to the Office Action mailed on 13 June 2006. Independent claim 1 has been amended so that the pump head is claimed as moveable for less than one second away from the backing plate, while the rollers of the pump head are rotating, such that the tubing is vented by removing the pinch between the rollers in the backing plate.

None of the prior art cited teaches such a movement of the pump head during use of the pump for venting the tubing. By including the limitations of the pump head moving away from the backing plate for less than one second and while the rollers are rotating, clearly distinguishes any of the cited art.

Neither Aubert nor Leveen, et al. teaches or suggests removing the pinch in the tubing between the pump head and the backing plate during use of the pump, as specifically claimed. In addition, neither Aubert nor Leveen, et al. teaches moving the pump head away from the backing plate for less than one second while the rollers are rotating, as specifically claimed. Neither Aubert nor Leveen, et al. are concerned with nor appreciate the need for the tubing to be vented.

The patent to Ognier in passing states that the rotor 3 or pump head can be disengaged from the stator or backing plate 2 for freying the tube 1 in the event of an over-controlled over-pressure. This is not the same as the claimed moving of the pump head away from the backing plate for less than one second while the rollers are rotating to vent the pinch between the rollers and the backing

plate. The present application specifically claims and teaches venting during use of the pump which the limitation of less than one second and requiring the rollers to be rotating sets forth. In addition, Ognier states that the movement of the pump head away from the backing plate is used to free an uncontrolled over-pressure situation. The present application vents the tubing to prevent an under-pressure situation or in other words, an excessive vacuum level within the tubing not an over-pressure situation as taught by Ognier.

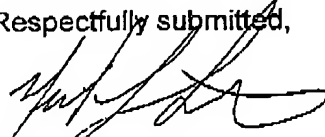
Ognier does not teach or suggest moving the pump head for less than one second away from the backing plate nor does it suggest moving the pump head away from the backing plate while the rollers are rotating, as specifically claimed in amended claim 1. By moving the pump head for less than one second and maintaining the rotation of the rollers, the pump head effectively is not pumping for less than a second the pump head from the backing plate. Ognier does not appreciate nor teach such a scheme. By moving the pump head away from the backing plate for such a short period of time and maintaining the rotation of the rollers, the pump can vent excessive vacuum levels in the tube while effectively continuing to pump fluid from a surgical site into a collection bag. As the Examiner has pointed out, Ognier also does not teach the use of a collection bag. Support for the amendment to claim 1 can be found at page 8, paragraph 27, and at page 9, paragraph 29.

The Examiner has in a number of instances stated that the prior art of Aubert, Leveen, et al., and Ognier are inherently capable of moving the pump head away from the backing plate for less than one second, as specifically

claimed. This possibility is not mentioned by any of the cited art and has been stated by the C.C.P.A. "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient." See *in re. Oelrich*, 666 F.2(d) 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). Essentially the missing element or function in this case, moving the pump head away from the backing plate for less than one second and rotating the rollers while moving the pump head, must necessarily result from the prior art references. This is simply not the case. Both Aubert and Leveen, et al. are silent as to movement of the pump head. While Ognier says that the pump head may be moved away from a backing plate, the purpose behind such movement is completely the opposite of the present application and **Aubert ?? or should it be Ognier ??** is silent as to the desirability of moving the pump head away for a short period of time, i.e. specifically claimed less than one second and the desirability of maintaining the rotation during this short venting period. Ognier is simply concerned with relieving an over-pressure situation rapidly, and not rapidly returning to pumping as would be achieved by moving the pump head away from a backing plate for less than one second, as specifically claimed. Therefore, the one second limitation, as well as the limitation of maintaining the rotation of the rollers as specifically claimed, are not inherently taught by the prior art.

Therefore, it is respectfully submitted that the amended claim 1 is in condition for allowance, and such allowance is requested at an early date.

Respectfully submitted,



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DATE: September 12, 2006

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